

# **E X H I B I T   1**

## **EXHIBIT B: Curriculum Vitae of Robert Wallace**

**Rob Wallace Expert Witness: Brand identity**

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**917-860-0319**

**Rob@bestofbreedbranding.com**

**www.RobWallaceExpert.com**

As the former managing partner of Wallace Church, Inc., one of the most recognized and accomplished brand identity strategy and design consultancies, I have more than thirty years of expertise in all aspects of branding strategy and design analysis for national and global brands. My core expertise is the ability to create and differentiate brand experiences that drive consumer awareness and purchase behavior.

Clients include Procter & Gamble, Coca-Cola, Unilever, Pfizer, Dell, Pepsico, Revlon, Target, The Home Depot, Johnson & Johnson, Bacardi, E&J Gallo, Mattel, Anheuser Busch, PNC Bank, Kroger, L’Oreal, Scotts/Miracle Gro and more than 40 national/global consumer product marketers of equal caliber.

**Areas of Expertise:**

**Trademark/Trade Dress                      Advertising Claims**

**Package/Product Design                      Consumer Research**

**Licensing**

**Intellectual Property                              Copyright Damages**

**Marketing Strategy                              Consumer Research**

**Brand Communications                              Planning/Analysis**

**Visual Brand identity**

**Industry Experience:**

Food	Personal Care
Beverage	OTC and Rx Drugs
Home Products	HBA/Beauty Care
Wellness	Technology Brands
Toys/Sporting Goods	Hard Goods
Beer/Wine/Spirits	B to B
Apparel	Retailer Brands
Financial Services	

**Background:**

Best of Breed Branding Consortium, LLC                          June 2014 – Present

**Managing Partner**

- Actively manage a consortium of branding communications consultancies.
- Provide strategic consulting on all branding issues including brand name development, brand identity, graphic and structural package design, trademark and copyright development, and integration across advertising and all other brand communications.

**Wallace Church, Inc.,**

1985 – June 2014

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<https://www.linkedin.com/groups?home=&gid=7422931> where I have posted more than 10 articles including:

- • “Right Here, Right NOW!”
- • “Fashion Touchdown”
- • “Color is Key”
- • “Cool Customization”
- • “Relevance for Right Now”

- o • “Shape Language”

- o • “Visual Vampires”

o

### **APPENDIX 3: Fee Structure**

The fee for my consulting and developing expert witness reports in this case is \$400 per hour. The fee for my attendance at depositions and trial in this case is \$500 per hour. My compensation is not dependent on the outcome of this litigation.

# **E X H I B I T   2**

## **EXPERT REPORT OF ROBERT WALLACE**

### **1. Assignment and Processes**

I have been retained by Belzer PC, counsel for Remington Arms, LLC, (Remington) in connection with an action filed by Daniel Defense, Inc., (Daniel Defense) against Remington.

I have been asked to analyze marketing and promotional materials including catalogs, web sites, advertisements, trade show graphics, and related elements and to provide my expert opinion as to whether:

1. Remington used any text containing the phrase “lighter stronger” in a manner consistent with industry standards concerning the use and development of a trademark or with trademark use best practices;
2. A double chevron graphic is a commonly used element in branding and other communications and materials; or
3. Remington used a double chevron graphic in a manner consistent with industry standards concerning the use and development of a trademark or with trademark use best practices.

In my analysis I reviewed the materials listed in Exhibit A. For this assignment, I:

- analyzed brand communications from Remington and Daniel Defense including advertising, web sites, catalogs, press releases, trade show graphics and promotional literature;
- did my own complementing search of the use of a double chevron icon and the terms “lighter” and “stronger” and “better” in other brand communications; and
- analyzed the use of chevron graphics commonly encountered by consumers.

The opinions I express in this report are not intended to be legal conclusions but embody my opinions on brand identity development standards and trademark usage best practices based on my expertise in the industry.

## **2. Qualifications**

As outlined in my Curriculum Vitae in Exhibit B to this report, I have more than 30 years of experience marketing and branding for dozens of consumer product companies, including Dick's Sporting Goods, The Home Depot, Coca-Cola, Procter & Gamble, Kraft, Nestle and dozens of other national and global brand owners.

I routinely create brand logos and identity standards and counsel clients on how to use them to achieve a consistent brand identity that optimizes consumer perception and recognition.

This 30-year expertise gives me a deep and relevant understanding of effective brand identity development standards and trademark usage best practices. Please see my Curriculum Vitae attached to this report as Exhibit B for the additional expertise relevant to my opinions in this case.

## **3. Trademark Best Practices**

Trademarks, including both word and logos, serve as a brand's core mnemonics. They are the visual cues that drive consumer recognition and build awareness of a brand. Therefore, brand identity industry best practices require use of a trademark that is unique and distinct enough to provide those recognition cues to consumers. Best practices also require that a trademark be used consistently across media platforms so as to optimize instant recognition at every consumer touchpoint. Industry best practice includes optimal consistency in the number and placement of graphic elements, their size in relation to each other, the type font and imagery used, the color of these graphics and the consistency of all other graphic devices.

## **4. Remington's use of text containing the phrase "lighter stronger" is not in a manner consistent with industry standards concerning the use and development of a trademark or with trademark use best practices.**

Some of the advertising, catalogs, and other brand communications created for Remington's DPMS brand used the following phrases:

**“LIGHTER, STRONGER AND EVEN MORE BADASS”**

**“LIGHTER, STRONGER AND EVERY BIT AS ACCURATE AS THE ORIGINAL”**

**“SMALLER. LIGHTER. STRONGER.”**

In the materials that I have seen, these phrases are part of the ad copy and not linked in any meaningful way with the DPMS logo or other elements of the DPMS brand identity. The phrases are not in the same typeface as the DPMS logo. They are not adjacent to the DPMS logo nor do they have any meaningful visual linkage to the DPMS trademarks. In my opinion, Remington uses these phrases solely as promotional/advertising copy. I have not seen any materials in which Remington uses these phrases as a trademark or in a manner consistent with trademark usage best practice.

Each of these phrases is inherently different from the other two. Though all three of these phrases share the words “lighter” and “stronger,” the other words in each of these three phrases is quite different. Moreover, the words “lighter” and “stronger” are not emphasized or set apart in any way that is often done to ensure that consumers view certain words separately from the phrases in which the words are used. The differences in the three phrases are not consistent with trademark use best practices.

In addition, in one of its ad copy phrases, Remington uses the word “badass”. This is an informal word many people would consider vulgar. In my experience, informal vulgarities are rarely used in a trademark. Because trademarks are used repeatedly and in a wide variety of contexts and publications, a company would not want any part of its public perception tied to a vulgarity. Again, in my opinion, the use of the word “badass” is inconsistent with trademark best practice.

The words “lighter”, “stronger” and “better” are, in my opinion, descriptions of functional product benefits. These words are commonly used by other brands to describe their features and benefits of similar products in an effort to influence consumer purchase decisions. For example

a number of brands use the exact phrase “Lighter, Stronger, Better” in their brand communications including Audi, Corning Optic Cables, Z frame luggage and Maggolina Carbon Fiber. The Storm Force aircraft tie down and the Sweet Protection Whitewater brands both use the same words in a different order: “Stronger, Lighter, Better,” and a number of brands use combinations of two of these three words including Alcoa Defense and the competitive fire arms brand, Aero Precision.

As used in the ad phrases, the words “lighter” and “stronger” are employed for the sole purpose of describing specific benefits of Remington’s products – i.e., the lightness and strength of those products. There is no mystery, double entendre, or subtle allusion that would add an extra layer of meaning to the ad phrases. The ad phrases immediately and succinctly inform the reader about the benefits of Remington’s products. Because these words are inherently functional and used commonly by other brands in describing their product benefits, in my opinion, Remington does not use these phrases as trademarks nor are their use consistent with trademark use best practice. They are, in my opinion, advertising or promotional copy.

In his deposition, Jordan Hunter agreed with my opinion that the words “lighter” and “stronger” are descriptive and functional. In his deposition, Mr. Hunter refers to these words, as “Those are descriptors. They were descriptors to help us justify a price point, you know, and separate us from our competitors just like anything in marketing.” Deposition of Jordan Hunter, 61:17-62:4. Mr. Hunter goes on to define the advantages that each of these words describe in differentiating the Daniel Defense products from competitive products. Mr. Hunter’s testimony confirms that these words are functional, descriptive and used for marketing purposes rather than used as a trademark.

#### **4. Double chevron as an icon and a commonly used element**

The chevron and chevron pattern is a well-known and commonly-used graphic in product promotion and many other uses. As noted on the website of the marketing company EReach Consulting: “Where are we seeing chevron? The short answer-everywhere. Chevron pattern has become so popular that it appears across multiple industries and economic markets. You’ll notice chevron making its mark in interior design, fashion, architecture, culinary arts, web design, advertising, packaging, and even branding.” (DPMS000260) The same website notes that “the

chevron pattern has been a design element for centuries.” (DPMS000261)

From a brand identity standpoint, I agree with the comments of EReach Consulting. A chevron, used alone or combined with another chevron into a double chevron, is a design element used so frequently that it has become a widely recognized graphic icon used commonly for its functional attributes of directing a consumer’s attention or providing directional way finding, like an arrow. A number of brands use a double or single chevron graphic as a functional or aesthetic part of their advertising and brand communications that is not part of their core brand identity. There are many functional uses of the chevron and the double chevron that consumers commonly encounter in both digital and physical media, such as directional road signs, website navigational icons, and bullet points. The single and double chevron are also common decorative elements used for their aesthetic qualities.

The design industry commonly uses stock art or “clip art” as a reference. The number of clip art pieces of any given image is often a reliable indication of how commonly used an icon is. A Google image search for “free double chevron icon” returns a large number of images of double chevrons very similar in shape to the double chevrons Remington used. Many of these images are from stock image resources where these double chevron icon could be easily downloaded for free. These search results further confirm that the double chevron icon is commonly used.

In addition, the simple double chevron Remington’s materials use is so simplistic that it can be rendered using keystrokes on almost any keyboard: >>, <<.

In my opinion, using such a common, non-distinct symbol as a trademark is not consistent with industry standards concerning the use and development of a trademark or with trademark use best practices because consumers would not identify the commonly used symbol as unique to the company using it or as part of the company’s brand identity.

## **5. Remington’s use of a double chevron**

In the materials I reviewed, I noticed that Remington uses a double chevron in different orientations. Remington uses this icon sometimes horizontally and in other times vertically. Remington uses the double chevrons pointing up, down, right, and left

Remington also uses the varying double chevron icons as both decorative elements and as functional marks to direct the viewer's attention or as part of a chart or table.

These inconsistent orientations and their different uses confirm that Remington is not using the common double chevron icon as a trademark but rather for other functional and decorative purposes.

## **6. DD's inconsistent use of its claimed trademark**

In my opinion, Daniel Defense often uses the double chevron in a manner that does not comply with trademark best practices. For example, Daniel Defense uses the common double chevron icon as an accent to call out a specific heading in its advertising or promotional material (DD003593) (DD003596) (DD003622) (DD003640), (DD002502) (DD000578). It is used as a decorative device in its advertising (DD003232) and other applications. It has been used as a bullet point to a call out to a list of features in advertising (DD000999). It has been used as a decorative background in its press releases, such as the background to "What Would LARRY Do" photograph (DD000580). These and other uses of the common double chevron icon are so inconsistent that in my opinion they do not conform with trademark use best practices.

Moreover, when Daniel Defense does uses the double chevron in consistently in connection with its "Double D" logo (which depicts two interlocking "Ds" interlocking, one in an upper-left position and one in a lower-right position). For example, the common double chevron icon appear next to the Daniel Defense logo in its 2014 catalog (DD00389) but not next to the logo in Daniel Defense's 2015 catalog. As another example, the common double chevron icon is sometimes used before a Daniel Defense product name but in other applications it appears after the product name (DD000020).

Daniel Defense also changes the orientation of the double chevron icon from pointing to the right to pointing up, down, and to the upper right such as when it is used as a reference pointer linking a caption and the area on the product to which that caption refers (DD000578). In other applications when the common double chevron icon is used as a decorative element it appears facing upwards and downwards (DD003223).

DD also changes the color of its varied use of the common double chevron icon. Many application of this icon are in yellow but they are also applications in white (DD003224). For example advertisement DD003224 is in full color, which would have easily allowed the icon to be in yellow, and yet it uses a white chevron. And again in this application the white common double chevron icon is not next to the prominent product name logo but rather used as a small accent highlighting a product feature.

Again, Daniel Defense's broadly inconsistent use of the orientation, relative size, color and application of the common double chevron icon, in my opinion, does not conform to industry standards regarding trademark use or trademark use best practices.

## **7. Conclusion**

Based on the materials I reviewed, it is my opinion that:

1. Remington did not use the text "Lighter, stronger and even more badass;" "Lighter, Stronger and every bit as accurate as the original;" or "Smaller. Light. Stronger" in a manner consistent with industry standards concerning the use and development of a trademark or with trademark use best practices as a trademark but rather as traditional promotional copy.
2. A double chevron icon is so very commonly used that it is a ubiquitous element used in product branding, directional way finding and other communications, and is therefore not consistent with industry standards concerning the use and development of a trademark or with trademark use best practices because consumers would not identify the commonly used symbol as unique to the company using it or as part of the company's brand identity.
3. Remington did not use the common double chevron icon in a manner consistent with industry standards concerning the use and development of a trademark or with trademark use best practices as a trademark.
4. Daniel Defense often uses the common double chevron icon in a manner that is not consistent with industry standards concerning the use and development of a trademark or with trademark use best practices as a trademark.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Rob Wallace".

Rob Wallace

July 10, 2015

### **EXHIBIT A: Materials Reviewed**

1.	2007 Daniel Defense Product Guide	DD3104-3131
2.	2008 Daniel Defense Product Guide	DD3468-3519
3.	2009 Daniel Defense Product Guide	DD3492-3519
4.	2010 Daniel Defense Product Guide	DD3520-3551
5.	2011 Daniel Defense Product Guide	DD3552-3587
6.	2012 Daniel Defense Product Guide	DD3132-3208
7.	2013 Daniel Defense Product Guide	DD750-85
8.	2014 Daniel Defense Product Guide	DD3588-3642
9.	2015 Daniel Defense Product Guide	DD3644-3674
10.	Amended Complaint of Daniel Defense	
11.	Chevron logo graphic	
12.	Citroen logo graphic	
13.	Daniel Defense advertising	DD00020
14.	Daniel Defense advertising	DD003223
15.	Daniel Defense advertising	DD003224
16.	Defendants' Second Supplemental Response to Plaintiff's First Requests for Production	DPMS 000254-303
17.	Deposition of Carlos Martinez	
18.	Deposition of Jason Marcello	
19.	Deposition of Jordan Hunter	
20.	Deposition of Lawrence Hagerty, Exhibit 20	
21.	DPMS GII Booth Photos	DPMS 282-85; 287-92; 295-302
22.	Email from Hunter to Hunter, 11/23/11	DD002501-2508
23.	Email from Hunter to Turley, 6/14/12	DD000578-583
24.	Exhibit 101	
25.	Exhibit 102	
26.	Exhibit 133	
27.	Exhibit 135	
28.	Exhibit 48	
29.	Exhibit 50	
30.	Exhibit 51	
31.	Exhibit 52	
32.	Exhibit 59	
33.	Exhibit 73	
34.	Exhibit 74	
35.	Exhibit 79	
36.	Exhibit 93	

37.	<a href="#">Exhibit 98</a>	
38.	<a href="#">Exhibit 99</a>	
39.	<a href="#">Webpage - images.google.com/search?tbm=isch&amp;q=free+double+chevron+icon</a>	
40.	<a href="#">Webpage – dickssportinggoods.com</a>	
41.	<a href="#">Webpage – dragon-models.com/d-m-item.asp?pid=WAR50094</a>	
42.	<a href="#">Webpage – Geograph.org.uk/photo/4264864</a>	
43.	<a href="#">Webpage – Google News</a>	
44.	<a href="#">Webpage – modelingmadness.com/scott/decals/kd4803.html</a>	
45.	<a href="#">Webpage – nacodes.com/category/plugins/pagination</a>	
46.	<a href="#">Webpage – nytimes.com</a>	
47.	<a href="#">Webpage – washingtonpost.com</a>	
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- • “The National Color” and more

I am the founder of the Linked In Group- “Relevant Disruption in Branding”

<https://www.linkedin.com/groups?home=&gid=7422931> where I have posted more than 10 articles including:

- • “Right Here, Right NOW!”
- • “Fashion Touchdown”
- • “Color is Key”
- • “Cool Customization”
- • “Relevance for Right Now”

- o • “Shape Language”

- o • “Visual Vampires”

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### **APPENDIX 3: Fee Structure**

The fee for my consulting and developing expert witness reports in this case is \$400 per hour. The fee for my attendance at depositions and trial in this case is \$500 per hour. My compensation is not dependent on the outcome of this litigation.